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JONES' ADM'RS *v.* COLEMAN.

June 14, 1917.

[92 S. E. 910.]

**1. Executors and Administrators (§ 221 (9)\*)—Claims against Estates—Evidence.**—In an action against an estate based upon a mutilated promissory note alleged to have been executed by deceased, evidence held insufficient to sustain the burden resting upon plaintiff under Code 1904, § 2841a, par. 123, providing that a cancellation made unintentionally or under a mistake or without the authority of the holder is inoperative, but, where an instrument or any signature thereon appears to have been canceled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally or under a mistake or without authority.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. §§ 903½, 1874, 1876.\* 2 Va.-W. Va. Enc. Dig. 495; 5 Va.-W. Va. Enc. Dig. 600.]

**2. Bills and Notes (§ 491\*)—Actions—Presumptions.**—Under Code 1904, § 2841a, par. 123, providing that a cancellation made unintentionally or under a mistake or without authority of the holder is inoperative, but where an instrument or any signature thereon appears to have been canceled the burden of proof lies upon the party who alleges that the cancellation was made unintentionally or under a mistake or without authority, where it appeared that a note sued upon in an action against the maker's estate was mutilated by burning, the presumption was that the burning was intentional and done for the purpose of canceling the instrument.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1643-1648.\* 2 Va.-W. Va. Enc. Dig. 493.]

Error to Circuit Court, Brunswick County.

Action by Kate D. Coleman against W. R. Jones and another, administrators of Reps Jones, deceased. Judgment for plaintiff, and defendants bring error. Reversed and remanded.

*Buford & Peterson*, of Lawrenceville, and *W. R. Jones*, of Blackstone, for plaintiffs in error.

*B. A. Lewis*, of Lawrenceville, for defendant in error.

GRAVATT *v.* LANE.

June 14, 1917.

[92 S. E. 912.]

**1. Boundaries (§ 3 (9)\*)—Construction—Rule.**—In construing a

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

deed, definitely established landmarks fixed by the parties or the conveyance will always prevail over acreage.

[Ed. Note.—For other cases, see *Boundaries*, Cent. Dig. § 41.\* 2 Va.-W. Va. Enc. Dig. 600.]

**2. Ejectment (§ 95 (2)\*)—Evidence—Sufficiency.**—In ejectment in which it appeared that the deed under which plaintiff claimed was executed pursuant to the purpose of making an equitable partition of a larger tract, but in which deed, due to a mistake as to the amount of land involved, statement of acreage reserved by the conveyance was less than that reserved by definitely established landmarks, evidence held to justify a verdict in accordance with the landmarks for plaintiff who was a subsequent grantee of the portion reserved.

[Ed. Note.—For other cases, see *Ejectment*, Cent. Dig. § 281.\* 4 Va.-W. Va. Enc. Dig. 910.]

**3. Ejectment (§ 25 (6)\*)—Defenses—Outstanding Deed of Trust.**—An outstanding, unsatisfied mortgage or deed of trust on land to secure a debt is regarded in actions of ejectment as a mere lien upon the property, and the mortgagor or grantor may still maintain ejectment in his own name, and the defendant will not be permitted to set up such mortgage or deed of trust to defeat the action, since while technically the legal title is in the trustee, it is only vested in him for the definite purpose of securing the debt.

[Ed. Note.—For other cases, see *Ejectment*, Cent. Dig. § 104.\* 4 Va.-W. Va. Enc. Dig. 902.]

Error to Circuit Court, Orange County.

Ejectment by A. A. Lane against J. E. Gravatt. Judgment for plaintiff, and defendant brings error. Affirmed.

*E. H. De Jarnette, Jr.*, and *Geo. L. Browning*, both of Orange, for plaintiff in error.

*Alex. T. Browning* and *V. R. Shackelford*, both of Orange, for defendant in error.

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#### SEABOARD AIR LINE RY. *v.* ABERNATHY.

June 14, 1917.

[92 S. E. 913.]

**1. Railroads (§ 324 (1)\*)—Injuries at Crossing—Contributory Negligence.**—The degree of care which a traveler approaching a railroad crossing is required to exercise is ordinary care.

[Ed. Note.—For other cases, see *Railroads*, Cent. Dig. §§ 1020, 1022, 1023.\* 4 Va.-W. Va. Enc. Dig. 127, 136.]

**2. Railroad (§ 351 (12)\*)—Injuries at Crossing—Instruction.**—In

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.